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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,417	04/30/2001	Michael P. Hynes	00414-062001	2882

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FISH & RICHARDSON PC  
225 FRANKLIN ST  
BOSTON, MA 02110

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/845,417

Applicant(s)

HYNES ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehansho et al. in view of Clark and Calderas, and Pflaumer et al. and further in view of Wallin et al., Stahl et al, Norris et al. and Yanko.

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. Claim 25 further requires that the composition have a brix value of less than 12. However, the brix value shows how much solids are in the composition, generally as sweeteners. It would have been obvious to add particular amounts of sweeteners to a composition in order to have a particular brix value, as it is well known what the sweetness levels are for the various sweeteners. Claims 27-28 further require that the UTH extract is a cranberry extract powder. However, the specification on page 12 discloses that cranberry extract powders are known and one is made by Ocean Spray (Trademark) and that the health benefits of UTH extracts are known (page 12, lines 3-21). Wallin discloses a extract containing plant anthocyanin colors from grapes which can be a powder (abstract). The other references, such as Stahl et al. , Norris and Yanko disclose extracts from beverages as states before. Applicants' UTH extract contains factors that are beneficial to the health including

urinary tract, and anthocyanidin compounds are listed as a component. The cited extracts certainly contain anthocyanins and the composition is therefore beneficial to the health. Applicant's specification does not disclose what their claimed UTH extract contains, except for broadly stating that it contains "nutrients, factors or compounds that enhance .....the health, including UTH "(page 12, lines 3-9). Cranberry extract is disclosed specifically by Yanko (abstract). Therefore, it would have been obvious to use a known cranberry extract as a UTH extract to enhance the health of the UT (urinary tract), because the extracts have been shown to contain anthocyanins which enhance the UTH.

Claim 29 further requires particular ratios of sucrose, fructose and pectin, claim 30 cranberry powder and claim 31 particular amounts of proanthocyanidins. However, these limitations have been discussed above and are obvious for those reasons. Nothing new is seen in claim 31 of a beverage composition that is free of artificial sweeteners, as it would have been within the skill of the ordinary worker to add such or not. Also, see *In re Levin* as before. The particular amount of proanthocyanidin is seen to have been within the skill of the ordinary worker because proanthocyanidin is also equated with anthocyanidins as being interchangeable, and anthocyanidins are found in any cranberry juice in the claimed amount (page 12 of specification, 1<sup>st</sup> para.). Also, the specification discloses that conventional cranberry juice contains from 25-60 mg of proanthocyanidins per eight oz of beverage and confers health benefits based on this (col. 13, lines 14-18). No patentable distinction is seen in using proanthocyanidins instead of anthocyanins. Therefore, it would have been obvious to make a composition

containing artificial sweeteners or not and particular amounts of proanthocyanidins because from 25-60 mg. Is a conventional amount.

### ARGUMENTS

Applicant's arguments filed 12-24-02 have been fully considered but they are not persuasive. Applicants argue that the UTH extract relates to extract for flavoring or coloring purposes. However, in a composition the particular function of an ingredient does not have to be that as claimed. In addition, just by the fact that the anthocyanidins provide color means that they are present and would perform their known functions such as contributing to UT health whether they provide color or not. Applicants are not claiming specifically the UTH extract referenced on page 12, line 8 and 10-11, and the one produced by OCEAN SPRAY is a commercial product. The claims do not require that the extract powder is flavorless or colorless.

Applicants argue the references as being colorants and flavor enhancers, however, this does not exclude them from being extracts, which contain anthocyanidins and therefore provide particular UTH benefits. It is not seen why Norris is said to be improperly cited. It is a patent publication, and has a date of Jan. 24, 2000 of the related U. S. Application.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

HP 4-23-03

*Helen Pratt*  
HELEN PRATT  
PRIMARY EXAMINER